

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

BILL REECE, DIANE REECE,
HERMAN TOLBERT, BENNETT
TANKSLEY, SUSAN HOLMES, and
CHARLES TACKETT, individually, and
as Representatives for those seeking
redress for damages,

Plaintiffs,

v.

AES CORPORATION, et al.,
TXD TRANSPORT, LP, et al.,

Defendants.

Case No. CIV-12-457-JH

The Honorable Joe Heaton

**DEFENDANT TXD TRANSPORT, LP'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT AND BRIEF IN SUPPORT**

Defendant, TXD Transport, LP ("TXD"), files this Rule 12(b)(6) Motion to dismiss Plaintiffs' First Amended Complaint, and Brief in support.

For its Motion to Dismiss and Brief in Support, TXD adopts the arguments and authorities set forth in the Motion to Dismiss filed on behalf of XTO Energy, Inc. ("XTO") [Doc. No. 350]. Plaintiffs fail to state a claim for relief against TXD. As XTO articulates in its Motion, the allegations in the First Amended Complaint are conclusory, vague, speculative and devoid of facts stating a plausible claim for relief against TXD. These defects apply to all claims alleged against TXD including strict liability, public and private nuisance, trespass, negligence, negligence *per se* and unjust enrichment.

TXD hereby adopts the arguments and authorities set forth in XTO's Motion to Dismiss as follows:

1. Plaintiffs' claims against TXD do not meet the threshold standard of plausibility set forth in *Twombly* and *Iqbal* (XTO Motion at 4-10);
2. Plaintiffs' allegations concerning the "Disposal" and/or "Transport" of fluids are insufficient to state a claim for relief against TXD (XTO Motion at 7);
3. Plaintiffs have failed to plead facts showing that TXD caused them any harm (XTO Motion at 8-10);
4. Plaintiffs failed to allege facts sufficient to show that transportation of produced fluids is subject to strict liability (XTO Brief at 13);
5. Plaintiffs continue to allege facts that support additional requisite elements of their other causes of action against TXD (XTO Motion at 15);
6. Plaintiffs failed to allege facts sufficient to support their public nuisance and trespass claims (XTO Brief at 15-16);
7. Plaintiffs failed to state a plausible negligence claim against TXD (XTO Brief at 16);
8. Plaintiffs failed to state a claim for negligence *per se* against TXD (XTO Brief at 18-21); and
9. Plaintiffs failed to state an unjust enrichment claim against TXD (XTO Brief at 22).

CONCLUSION

For the reasons set forth herein and as adopted through the Motion to Dismiss filed on behalf of XTO, TXD respectfully requests the Court enter an order dismissing all of Plaintiffs' claims against TXD with prejudice and for such other relief as TXD may be entitled.

Respectfully submitted,

s/ Lance E. Leffel

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2013, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: A. Scott McDaniel, Alan Rudlin, Allison Maynard, Andrew Conway, Brian McLaughlin, C. Michael Daily, Charles Neal, Jr., Clark Brewster, Clint Russell, Courtney Ross Samford, Daniel Zorn, David Senger, David Wulfers, Dru Waren, Floyd James III, Gary Crapster, George Sibley, III, James Reed, James Crews, Jared Giddens, Jason Smith, J. Dillon Curran, Jeff Woods, Jodi Dishman, Joshua Hanbury, J. Randall Miller, Justin Ross, Kara Moore, Linda Martin, Matthew Sheets, Michael Smith, Michael McDaniel, Miranda Russell, Montgomery Lair, N. Lance Bryan, Philard Rounds, Jr., Philip Watts, Pine Drewyor, R. Stratton Taylor, Rachel Parrilli, Reagan Madison, Rick Westcott, Robert Honea, Robert Rolfe, Robert O'Bannon, Robert Coffey, Jr., Sarah Timberlake, Sean Burrage, Sean Higgins, Shannon Davis, Sharon Thomas, Stacy Acord, Stephen Palmer, Stephen Ryan, Stone Sanders, Thomas Ladner, Timothy Bomhoff, Todd Henshaw, Truman Rucker, Jr., Warren Gotcher, William McAlister, William Perrine, William Leach.

s/ Lance E. Leffel

Lance E. Leffel

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